The Honorable John W. Hickenlooper, Governor

Barbara Kelley, Executive Director

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Department of Regulatory Agencies
Division of Real Estate

Real Estate news

Inside this issue:

MLO Continuing Education Compliance Rates

As of June 30, the Division of Real Estate's Mortgage Loan Originator program noted that less than 10 percent of all licensees had completed the 2011 Colorado Two (2) Hour Annual Update Course required by the Division. With four months left in the year, there is still time to take the course and ensure compliance with all license requirements. The Division tracks who has attended the course and those who have not completed the requirements by Jan. 1, 2012, will have their licenses deactivated. They will be prevented from reinstating until the course is completed.

A complete list of Division-approved course providers is available online. Many of the providers also offer the eight-hour (8) continuing education course required by the Nationwide Mortgage Licensing System and Registry (NMLS). NMLS is reporting that only 20 percent of licensees nationwide have completed its eight-hour course, as of August 1. Failure to complete the NMLS portion will result in licensees not being able to renew their licenses.

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Director's Corner

By Marcia Waters, Division of Real Estate Director

As I mentioned in the Division update article featured in the spring newsletter, earlier this year we conducted a review of all of the existing rules adopted by the four boards and commissions housed within the Division. The purpose of the rule review was to assess whether the rules were timely, comprehensible and necessary. We found that one program did not need to have any revisions made. The Board of Mortgage Loan Originators completed a comprehensive series of rulemaking hearings to make the necessary transition from a Director model to a Board model program, so these rules did not require further revision. The three remaining regulatory programs will begin conducting rulemaking hearings starting in September to

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Both courses will be offered until the end of 2011 and are available to take online. The Colorado course is also available in a classroom setting through select providers. It's important to note that both continuing education components must be completed by Dec. 31, 2011. For licensees who may have taken the education earlier in the year, completion status can be checked in NMLS.

A list of NMLS continuing education providers is available on the NMLS's website.

THE HONORABLE JOHN W. HICKENLOOPER
Governor of Colorado

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COLORADO REAL ESTATE COMMISSION

COLORAD BOARD OR MORTGAGE LOAN ORIGINATORS

COLORADO BOARD OF REAL ESTATE APPRAISERS

COLORADO CONSERVATION EASEMENT OVERSIGHT COMMISSION

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Two New Managers at Division

The Division of Real Estate is currently undergoing a staff reorganization in an effort increase efficiency and customer service. Part of this plan includes expanding the Division's Education section and hiring a manager to oversee the section and hiring a manager to oversee all of the Division's complaint investigations.

Introducing …

Eric Turner was hired in August as the Education, Communication, and Policy manager. He oversees a staff of six (6) and will manage the Division's continuing education, rulemaking and communication and outreach for all programs. Turner has experience in several areas of the real estate industry, working as a real estate broker with a local Realty company and owning his own mortgage company. He began his real estate career in 1995 as a loan officer and earned his real estate license in 2009.

Turner is a lifetime resident of Colorado and currently lives in Denver with his wife and two children. He earned his Bachelor of Arts from the University of Northern Colorado and has served on multiple boards, including the Denver Better Business Bureau. He is an avid skier who enjoys the Colorado outdoors and is considered to be a master of the grill by his family and friends.

Reintroducing …

Hollis Glenn was promoted to as the new Investigations and Compliance Officer in June and now oversees all investigations taking place in the Division. He previously held the position of program manager of the Conservation Easement program and subdivision registration. Glenn also worked with members of the timeshare industry and served as the contact for Colorado consumers with questions on timeshares.

He started out in the real estate industry in 2003.

Glenn began his career with the Division in 2007, working as a mortgage loan originator investigator. He was shortly promoted to Conservation Easement Program Manager, working in tandem with the Department of Revenue to implement the State's $23 million per year cap on conservation easement tax credits.

He is a Colorado native and loves to spend time in Colorado's high country. He will complete his Master's Degree in Business Administration this fall.

Information on all of the different programs and segments of the real estate industry regulated by the Division can be found on the Division's website.

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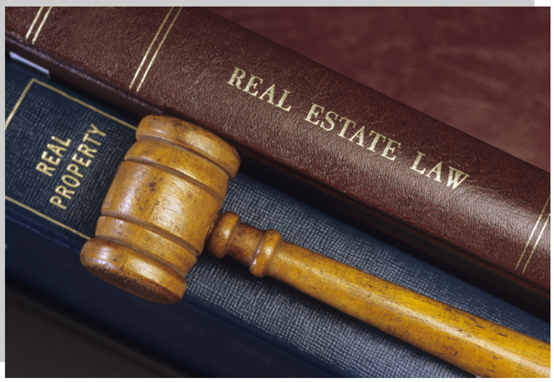
address the necessary revisions that need to be made to their rules.

On Sept. 1, 2011, the Board of Real Estate Appraisers conducted a rulemaking hearing and adopted revisions to Chapters 1 and 2 of the Board Rules. The Board will be repealing definitions and requirements for licensure that were specifically applicable prior to Jan. 1, 2008. There are proposed modifications to some definitions to provide clarity for the industry. Also considered and adopted was a rule that specifically defines "good standing." Revisions to Chapter 3 is scheduled for rulemaking on Oct. 6, 2011. While the Board will continue to repeal rules specific to licensure requirements that were phased out as a result of the implementation of the 2008 Real Property Appraiser Qualification Criteria, the Board will consider revisions that will aid in the implementation of the proposed changes addressed in the AQB's Fourth Exposure of Proposed Revisions to the Future Real Property Appraiser Qualification Criteria. The Board will consider rule revisions that will provide additional guidance regarding the Board's expectations for supervising appraisers. It is our goal to conduct a rulemaking hearing every month to address the necessary rule changes with the Board. Once the Board completes this project, it will have considered revising or repealing approximately 120 rules.

On Oct. 4, 2011, the Real Estate Commission will conduct a permanent rulemaking hearing to revise Rules B-2 and F-7. The proposed change to Rule F-7 will sever the Commission-approved contracts from the body of the rule to enable the Commission to make administrative changes to the rules throughout the year without having to conduct a separate rule-making hearing to modify one of the Commission-approved forms. The Commission will continue to seek industry commentary regarding the effectiveness of the Commission-approved forms, along



with recommendations for form modifications. The proposed change to Rule B-2 will clarify the rule to specify that brokers cannot take the same version of the Commission update course more than once for continuing education credit. There are approximately 20 Commission rules in need of revision and we plan on scheduling rulemaking hearings for every Commission meeting until the necessary changes have been made. At the October meeting, the Real Estate Commission will also consider a new rule, Rule E-47 regarding competency. The proposed rule would require real estate brokers to assess whether they have the experience, training, and/or education necessary to complete the terms of a transaction prior to entering into an agreement to provide brokerage services. If the broker does lack the experience, training, and/or education, the broker would be required to either decline to provide brokerage services or enlist the assistance of a broker who is competent to complete the terms of transaction.

The Conservation Easement Oversight Commission will conduct a rulemaking hearing on Oct. 24, 2011 to consider revising Rule C-1, which addresses the submission of claims for a tax credit certificate. The rule currently refers to the original $26 million annual tax credit cap that was created by the passage of HB10-1197, but the cap was subsequently lowered this year with the passage of HB11-1300. The Commission will consider a new rule, Rule D-2, which will address the transfer of conservation easements from a certified entity to a non-certified entity. The rule proposes to prohibit these types of transfers, with only government entities being exempt.

As we continue through the rulemaking process, we encourage interested parties to participate by submitting comments or concerns to the appropriate board or commission. We request that the submissions be made in writing no less than ten (10) days prior to the date and time of the rulemaking hearing. If you would like to be included in the blast electronic mail notifications that the Division sends out, please sign up at www.dora.state.co.us/real-estate/.

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Division of Real Estate

Why You Might Want to Question The Way You Were Trained

If asked to explain why you do things a certain way when performing an appraisal, what's your most common response? If your response is "that is the way I was trained," then you may have good reason to reconsider and question the quality and extent of your training. Why? You have responsibilities imposed by the issuance of a license credential and the importance of your role as a professional appraiser.

What is the Issue?

Many appraiser trainees were held to high standards and received active and diligent supervision and adequate training by competent, experienced and knowledgeable appraisers. However, based on responses from appraisers whose work has been reviewed as the result of a complaint investigation or application for a credential, it is also clear that some unfortunate trainees received poor and inadequate training from unqualified, unknowledgeable or disinterested supervisors. The issue of poor supervision has been recognized nationwide. The result is that the Appraiser Qualifications Board of The Appraisal Foundation is proposing changes to include criteria specifically for trainees and for appraisers who supervise trainees. Drafts of the proposed criteria can be found at The Appraisal Foundation's website.

"This may be a little uncomfortable"

Of immediate concern, however, is the effect that poor training and supervision may have had on the essential abilities of some of our current appraiser population to perform assignments competently and to produce credible assignment results. Regardless of what you may think of your supervisor, it may be in your best interest to critically examine your appraisal practices and procedures, methodologies, techniques, and even possible misconceptions or biases that may have been handed down from your supervisor. Should this examination reveal any deficiencies, you will want to consider implementing corrective measures such as those described below.

Examples of Poor and Inadequate Training

Are these examples of unacceptable appraisal training practices familiar?

- Did your supervisor teach you to "back into" the cost approach, and to make sure the indicated value was within a few thousand dollars of the value indicated by the sales comparison approach?
- Were you taught to make the predominant neighborhood value within a few thousand dollars of your appraised value, and the high and low neighborhood values $50K to $75K above and below your appraised value?
- Were you taught that simply restating in an addendum the adjustments that were applied in the sales comparison grid was adequate support and sufficient summary of your analysis?
- Were you taught that it was unnecessary to correctly identify and report land use regulations (e.g., zoning) and to summarize your analysis of the effect on use and value?

- Were you taught that the only things that go into the work file are the appraisal order, MLS listing sheets, and a copy of your appraisal report?
- Were you taught to make adjustments from "the list" provided by your supervisor?
- Were you taught that the highest and best use of real property is always its existing use and that it is acceptable to summarize your conclusion without summarizing the reasoning or rationale for that conclusion?
- Were you told that adjustments for market conditions

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and seller concessions were unnecessary, and that applying them in your appraisal would cause problems getting the appraisal past underwriting? Or, were you told to simply state in your appraisal report that no adjustments were made for seller concessions because they were typical for the area?

- Were you taught that the only reconciliation that is required in an appraisal is of the three approaches to value?
- Were you taught that the indicated value by the sales comparison approach to value was based on averaging the adjusted sales prices?
- Were you taught that supply/demand and marketability analyses aren't important in market valuations?
- Were you taught that comparables within the "one mile guideline" could be used, without respect to subdivision location?

- Were you taught that if you filled in all the fields on a 1004 URAR form, you had completed a USPAP-compliant summary report?
- Were you taught that it was unnecessary to analyze the subject property sales history and any agreements of sale (contracts), options or listings current as of the effective date of value?
- Were you taught that geographic and market area competency is unnecessary?
- Were you taught that it was unnecessary to abide by USPAP standards?

These examples illustrate how poor and inadequate training often results in substandard practice by the appraiser trainee, to be carried forward for years to come. Unfortunately, this has proven to be true with appraisers at all levels of licensure.

<u>Examples of Misconceptions and Biases</u>

Of additional concern are various misconceptions and biases that are somewhat common in the profession. These have been passed on from supervisor to trainee, and are perpetuated when the trainee becomes a supervisor.

For example:

Appraisers may state that they don't bother to verify comparable data since "the brokers never call back." But, in the course of conversation, it becomes apparent that they never attempted to call the brokers for that particular assignment, and it is their practice to not call brokers. Further discussion reveals that this was the way they were trained, this is what they hear from other appraisers, and they have never considered it appropriate and necessary to verify the accuracy of information from an appropriate source.

Along those same lines regarding verification we often hear that "I verified my data through the MLS data". While the MLS is a good source of basic information it cannot provide all the nuances of owner motivation, upgrades, accurate seller concessions, etc. We oftentimes hear that "I looked at the photos in the MLS" to verify condition and upgrades. Remember, the MLS is a database used to market properties for sale, and the information regarding the condition and features is usually the subjective opinion of the listing broker. The information contained therein needs to be verified as it may not be indicative of the property's actual condition and there are other value influences that cannot be reflected in a photograph.

Another misconception involves the cost approach; many appraisers think it is virtually worthless. Their supervisors never taught them to properly develop and report the cost approach, and they have never taken a course from their cost data provider to learn the intricacies and nuances of their particular method. This lack of understanding makes it difficult for them to identify when the cost approach may be applicable or to discern its value as a check for market trends. It may well be that this lack of understanding of the cost approach has fostered a negative mindset and possibly even an unsupportable bias against this approach. However, appraisers should apply all the value approaches applicable in the analyses to develop a well-supported opinion of defined value.

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According to the Industry

In this section, industry experts share their knowledge and expertise in articles covering a variety of topics pertinent to each part of the real estate community.

Resales and Timeshare's Sticky Wicket

Depending on the day, I could think of any number of phrases to describe the timeshare market since 2008. But for this article, sticky wicket will do. For those unfamiliar with the origin of the term, a "sticky wicket" was first used to describe a cricket field (also known as "the wicket") as the sun dries it out after a rain. As the wicket dries, its shape and contours change, resulting in unpredictable ball movement.

First the Rain . . . .

In the years prior to the Great Recession, the timeshare wicket was near perfect. Between 1994 and 2007, timeshare sales had grown from $1.7B to $10.6B. The number of timeshare resorts had grown to over 1,600 (with 76 in Colorado alone) and the number of timeshare intervals sold surpassed 6M. Best of all, consumer satisfaction surveys during the period routinely reported that more than 80% of timeshare owners rated their ownership experience as "excellent," "very good," or "good."

But when the rain started to fall during that tense period between 2008 and 2009, the timeshare industry experienced a spike in both mortgage loan defaults and unpaid assessments as owners struggled to make ends meet. Developers, also suffering, had difficulty accessing financing and other resources necessary both to sell new inventory and to recycle this default inventory. Owner associations, in turn, faced increasing bad debt and operational shortfalls as their membership base shrank. From 2007 to 2009, average maintenance fees increased by more than 17% as associations allocated rising expenses across fewer owners.

Further complicating the above, segmentation analysis shows that just over 20% of timeshare owners are "at risk." More than half of this population (13% overall) are characterized as "advocates of timeshare ownership but vulnerable to attrition due to external circumstances." The remainder (8% overall) are seeking to leave timeshare ownership. While the reasons for dissatisfaction with the timeshare product vary, it is more than a coincidence that this "at risk" population is significantly older on average than a typical timeshare owner (59 v. 52).

. . . Then the Sun

Given the above, it is no surprise that we are seeing a bump in the number of owners looking to sell their timeshare on the secondary market. This bump represents a significant change in the timeshare wicket, and a number of developers and independent companies are hard at work to create models and techniques to perfect the timeshare resale process. These models generally fall into two broad categories: licensed real estate brokers who specialize in timeshare resales and unlicensed timeshare resale advertising companies.

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According to the Industry

As expected, the models differ in some significant respects. With respect to services, the advertising companies cannot assist in pricing the timeshare for resale or participate in the sale/purchase negotiations because those activities require a real estate license. However, advertising companies will often do a better job of marketing the timeshare, especially on the internet. As to fees, advertising companies will typically charge an upfront fee while licensed real estate brokers will usually charge a commission (subject to a minimum) that is payable upon a successful sale of the timeshare. Where allowed by law, brokers may also charge an upfront fee to cover certain expenses, such as advertising.

The wicket gets sticky, however, when a timeshare owner gets frustrated by the length of time it takes to sell his/her timeshare in the current economy. In some circumstances, the frustration causes the owner to price the timeshare well below its actual value, thereby distorting the market for other timeshares at the same resort. The owner may also become susceptible to fraudsters who promise quick, but unrealistic, results in exchange exorbitant fees. In a worst case scenario, the owner may become convinced that the timeshare is nothing more than a maintenance fee liability with no asset value whatsoever. In that case, the owner may actually pay money to a "relief company" that offers to take the timeshare "off their hands."

Owner associations should work toward eliminating these unpredictable bounces by offering educational programming specifically targeted toward owners interested in selling their timeshare. In developing that programming, associations should keep in mind the following:

- Each owner has a life cycle during which he/she can use and enjoy the timeshare. Acknowledge this fundamental fact and avoid implementing procedures which make resales more difficult to consummate.
- Chances are very good that your owners are currently being solicited to purchase resale services. Provide them with the means necessary to identify which offers are legitimate and which are not. Luckily, associations don't have to start from scratch here – they can use the information available at the Timeshare Resale Resource Center, a new website recently launched by ARDA's Resort Owner Coalition: http://www.ardaroc.org/resales/
- One reason an advertisement might not be working is that the owner has not accurately described the timeshare being sold. Head this problem off at inception by creating an owner reference tool that includes a general description of the resort and its use plan.

Keep in mind that ARDA's 2010 Resale Study found that a majority of recent buyers felt more comfortable purchasing timeshares when they believed the purchase was endorsed by an objective third party. Implement procedures that allow the association to provide that endorsement comfort to buyers.

Consider selecting two or three resale service providers to be the association's "approved" resale providers. Focus on documented performance rather than fee structure. There is no "best" model as neither your owners nor their timeshares are fungible.

David Waller is the senior hospitality lawyer in Baker Hostetler's Denver office. You can reach him directly at (303) 764-4093 or at dwaller@bakerlaw.com. For updates on a number of timeshare and hotel issues, including resales, check out his blog at www.hospitalitylawg.com.

1. *See* http://en.wikipedia.org/wiki/Sticky_wicket. With both the Rockies and my beloved Cardinals out of the pennant chase, baseball metaphors were off limits.
2. *2010 State of the Vacation Timeshare Industry: United States Summary.*
3. See for example the *2010 Shared Vacation Ownership Owners Report.* In this survey, despite the emergence of the issues addressed in this article, 57% of owners ranked their experience as "Excellent / Very Good" and 27% reported their experience to be "Good." In addition, 69% would "definitely/probably" recommend their timeshare resort to a friend.
4. *2010 State of the Vacation Timeshare Industry: United States Summary.*
5. *2010 Shared Vacation Ownership Owners Report.*
6. For an example of how this fraud works, see http://www.ftc.gov/opa/2011/07/nationalsolutions.shtm. It should be noted that this type of fraud typically fall outside the regulatory purview of the Colorado Division of Real Estate.
7. For an overview of this phenomenon, see http://www.hospitalitylawg.com/vacation-ownership/relief-companies---playing-offense/.
8. For a discussion of resale fee models, see http://www.resorttrades.com/articles.php?showMag=Resort&act=view&id=718

According to the Industry

Land Matters - Withstanding Trying Times, Preserving Family Heritage

By: Colorado Coalition of Land Trusts

The Gallegos Ranch sits in the Piedra Valley, which gets its name from the Spanish word for "rock." It's a fitting word. Like a rock, the ranch has weathered some pretty rough times. But it has survived for Five generations.

"Every day that I go out to work on the land is a tribute to my grandfather and his dreams of making a better life for his family," says Junior Gallegos.

Although the Gallegos family lineage is somewhat of a mystery, Junior suspects that his ancestors came from Spain. Junior's grandfather, Rubio Gallegos, came to Colorado from Espanola, New Mexico, in 1890 when he was 10 years old. He was working as a servant for the Candelarias, a long-time Colorado ranching family. When he was 15, the Candelarias gave him 1,500 sheep, and Rubio set out to start a ranch of his own. He fell in love with the Piedra Valley and bought a piece of land there.

As the years went on, Rubio bought more pieces of land, but ended up losing a lot of property during the Great Depression; only the original piece of land that he had bought with his sheep-herding earnings remained. But, little by little, Rubio saved his money and began to buy back the lost pieces of land during the 1930s and '40s. By the time Junior's father, Juan Francisco, took over the ranch in 1941, the property had grown to about 4,800 acres.

"I always knew that I would eventually take over the ranch," says Junior. "As so many ranchers say, it's in my blood."

When Junior and his wife, Florian, married, she went with him to take the sheep up to the high country for the summer. Because sheep wander and must be watched 24 hours a day, they made their bed on the hillside, and that's where they slept for several months.

"I knew then that I was lucky to have found a woman who would put up with such a rugged lifestyle," says Junior.

When Junior's father passed away in 1965, he decided that sheep required too much maintenance, so he traded them in for cattle.

"Cattle require a lot less care – once we calf and brand them in the spring, they go out to pasture in the summer, and we don't have to watch them all the time like we did with the sheep," says Junior. "After we switched to herding cattle, our lives became much freer."

Although cattle ranching may be easier, is it not very profitable, Junior explains. The money that the Gallegoses get from selling beef sometimes doesn't make ends meet. There were times Junior was forced to take part-time jobs on the side, working on construction or at a sawmill.

"When my mother died in 2003, we realized that she did not make a trust to secure the future of the ranch," says Junior. "For the land to be transferred from my mother's name to ours, I had to pay the U.S. government around $2 million in taxes. Although we were rich in land, none of it came out to cash in our wallets. We didn't have the money to pay the government

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According to the Industry

QRM and QM: What a Difference an "R" Makes

By: Terry K. Jones, Chairman, Legislative and Regulatory Affairs Committee, Colorado Mortgage Lenders Association

When Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act and President Obama signed it into law on July 21, 2010 a new era of mortgage regulation began to take shape. Two new definitions and a new federal regulatory agency promise to be at the root of a paradigm shift for the mortgage lending industry as we know it today.

The Qualified Residential Mortgage (QM), a safe harbor contained within the risk retention proposed rule required by Dodd-Frank, and the Qualified Mortgage (QM), which *might* be structured as a safe harbor within the ability to repay proposed rule, are concepts established by Dodd-Frank that will shape the future structure of residential mortgage lending. Definitions of both the QRM and the QM have been set forth in proposed rules which have now concluded their public comment period. The Consumer Financial Protection Bureau (CFPB) officially opened its doors for business on July 21, 2011, the anniversary of the adoption of the Dodd-Frank Act.
The significance of these three changes coming as a result of Dodd-Frank, are impossible to overstate. The QRM and the "Risk Retention" rule as proposed, will cause interest rates to rise significantly for many borrowers; the QM and the "Ability to Repay" rule will establish new levels of liability for lenders and mortgage loan originators alike; and the Consumer Financial Protection Bureau will be the ultimate rule making and enforcement agency with authority over the mortgage lending business.

<u>The Qualified Residential Mortgage (QRM):</u>

The QRM establishes the "Safe Harbor" definition for loans where risk retention will not be required of mortgage securitizers. By creating a category for loans that will be considered the safest risks, the rule creates a new threshold for borrower interest rates. Just as in the past, where the dividing line between conforming and non conforming (Jumbo) loans marked a threshold where borrowers of non conforming loans could expect to pay a higher interest rate than borrowers on conforming loans, so too will borrowers who do not meet the requirements for a "Qualified Residential Loan" pay a higher interest rate than those who can satisfy those requirements. According to many analysts, the interest rate spread between QRM qualified borrowers and non-QRM qualified borrowers could easily be in the 80 to 185 basis point range. In other words, a borrower whose loan does not meet the standards of a Qualified Residential Loan could expect to pay from .8 to 1.85 percent more in interest rate than a borrower whose loan does meet those requirements. This likely rate differential makes the terms of the Qualified Residential Mortgage Safe Harbor of paramount importance.

The most significant requirements of the proposed QRM safe harbor are the down payment requirements and the limits on debt-to-income ratios. The proposed rule sets the down payment requirement for purchase money first mortgages at 20% down. For rate and term refis, the borrower must have 25% equity in the property, and if the loan will be a cash-out refi, the borrower must have 30% equity in the property. Given that current statistics show 58% of Colorado homeowners currently have less than 25% equity in their homes, these refi equity requirements will keep many homeowners from refinancing at the lowest rates available if the proposed rule is adopted in its current form. In addition to the down payment requirements, the borrower's mortgage

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payment-to-income ratio cannot exceed 28%, nor can the total debt-to-income ratio exceed 36%.

The good news is that FHA, VA, and USDA loans would be exempt from risk retention as would Fannie Mae or Freddie Mac loans *as long as Fannie and Freddie are under government conservatorship.* This means that there would likely not be a huge impact right away if the proposed rule is adopted in its current form. However, since it is the stated aim of both political parties, liberals and conservatives alike, that the government reduce its role in the housing market; the long term effects of these QRM requirements, as government loan programs are scaled back and Fannie and Freddie emerge from conservatorship, would be an increase in interest rates (independent of economic conditions) for many borrowers who are considered "prime" borrowers by today's standards.

The Qualified Mortgage (QM):

The ability to repay rule and the Qualified Mortgage definition require that neither lenders nor mortgage loan originators make a residential mortgage loan unless they first make a reasonable and good faith determination based on verified and documented information that, at the time the loan is consummated, the consumer has a reasonable ability to repay the loan according to its terms, and all applicable taxes, insurance (including mortgage guarantee insurance), and assessments. (Note: the ability to repay proposed rule does not cover HELOCs, Loan Modifications, Timeshare Plans, Reverse Mortgages or Temporary Loans).

If the lender or the mortgage loan originator originates a loan within the QM exemption, they are presumed to have met the ability to repay requirement. The Qualified Mortgage exemption to the ability to repay rule has been proposed in two alternative ways. In the first alternative, the QM exemption would be structured as a safe harbor. In such a case, a lender or mortgage loan originator who originated a mortgage within the parameters set forth for a qualified mortgage would automatically be presumed to have complied with the ability to pay rule. The second alternative proposed would structure the qualified mortgage exemption as a rebuttable presumption. The Colorado Mortgage Lenders Association (CMLA) has strongly recommended in our comment letter to the CFPB and in testimony before the House Small Business Subcommittee on Investigations, Oversight and Regulations, that the QM be adopted as a safe harbor rather than a rebuttable presumption. A Safe Harbor QM will provide much more certainty of compliance to lenders as well as to mortgage loan originators. A rebuttable presumption on the other hand will allow borrowers the ability to attempt to rebut the lender's or the mortgage loan originator's compliance with the qualified mortgage exemption.

If the lender or the originator fails on any count to comply with the exemptions for a qualified mortgage, as determined by a court (and each court could take a different approach to what constitutes the evidence necessary for a rebuttable presumption) the lender and/or mortgage loan originator could be exposed to significant penalties. For example, a mortgage loan originator found to have violated the ability to repay rule, for each violation, could be liable for up to the greater of actual damages or an amount equal to three times the total amount of direct and indirect compensation or gain accruing to the mortgage originator in connection with the residential mortgage loan involved in the violation, plus the costs to the consumer of the action, including reasonable attorney fees.

The significant points of the QM Safe Harbor alternative in the proposed rule provide that in order to qualify for the safe harbor exemption, loans:

- Must provide for regular periodic payments that do not result in an increase of the principal balance **(no negative amortization)**
- Must not allow the consumer to defer payment of principal **(no interest-only loans)**
- Must not result in a balloon payment. (except for extremely limited circumstances in rural and underserved areas)

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to keep the land, and we were afraid that we'd lose it."

Junior learned about the conservation easement tax credit program from a fellow rancher who had been in the same predicament and had used the easements to get out of debt. By establishing an easement with the Colorado Cattlemen's Agricultural Land Trust and gaining tax credits from the state and federal government, the Gallegos family found the means to pay off the taxes. This spring, they will get the last tax credit from the IRS and will finally owe no more taxes.

"Then I will consider myself a free man," says Junior.

There is no doubt in Junior's mind that, without these tax credits, they would not have the ranch all.

"We would have been forced to sell the land to developers, and there would be houses or factories on this beautiful land," says Junior. "This land was not meant to support development. When my grandfather fell in love with the Piedra Valley over one hundred years ago, he knew that this land was meant to support ranching."

"I love this land and I love the way of life it brings. When I'm out working on the land, I feel like I am my own boss and, next to paying off my debt to the IRS, that is the most freeing feeling in the world."

-Colorado Coalition of Land Trusts

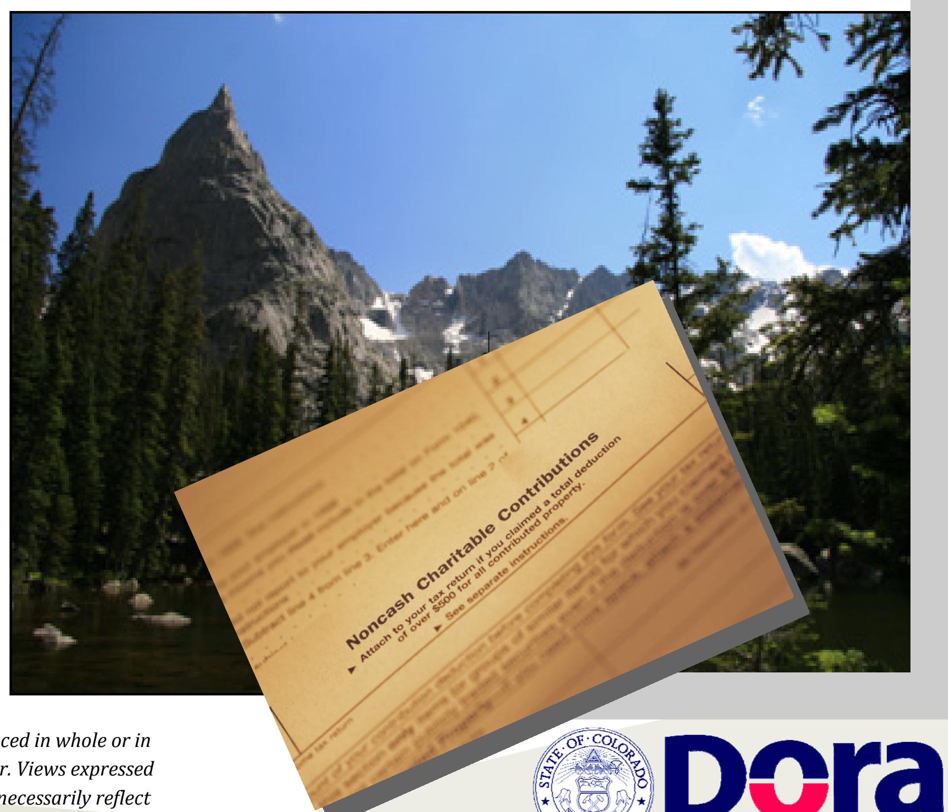
Con$ervation Ea$ement Tax Credit Cap

In 2011, the Division of Real Estate (Division) began managing Colorado's conservation easement tax credit cap. Legislation passed in 2010 and 2011 limits the total amount of conservation easement tax credits available in 2011 and 2012 to $22,000,000 each year and to $34,000,000 in 2013. The tax credit cap is set to expire in 2014.

The Division issues tax credit certificates to landowners who donate an eligible conservation easement to a land trust or government entity Certified by the Division of Real Estate. The conservation easement must protect agricultural land, open space and scenic lands, wildlife habitat and/or land for public recreation. Tax Credit Certificates issued by the Division allow landowners to claim a tax credit with the Colorado Department of Revenue.

As of August 26, 2011, the Division has issued 44 Tax Credit Certificates worth $12,790,853. The 44 conservation easements that generated the tax credits have permanently protected 23,841 acres of Colorado's natural landscape. The conservation easements represent $30,934,187 in donations made by Colorado farmers, ranchers and landowners who received only $12,790,853 of tax credits in return. This year through the conservation easement tax credit program Colorado has leveraged nearly $2.5 dollars worth of land conservation for every $1 invested.

For more information of the conservation easement tax credit cap visit http://www.dora.state.co.us/real-estate/



A Real Estate Broker's Responsibilities in Disclosing HOA Information

As the HOA Information Office has collected information and data on HOA issues, a common complaint heard is that the homebuyer did not have adequate information on the HOA prior to purchase to understand what the financial obligation would be; what restrictions were on the property; and the health of the HOA. While there are many benefits to living in an HOA (shared neighborhood values, a mechanism for enforcing uniform regulations, providing shared amenities and areas for recreation) there are also certain restrictions that a particular HOA may have that may make it unsuitable for a particular buyer.

During the sale of a property, Colorado Real Estate Commission laws and contracts requires certain information about an HOA to be disclosed to the potential purchaser. The Seller's Property Disclosure requires the seller only to disclose whether (1) the property is in an HOA; (2) whether there are special assessments or increases in regular assessments that are approved but not implemented by the HOA; and (3) whether the HOA has made demand or commenced a construction defect litigation lawsuit on common property. The Commission's Contract to Buy and Sell provides a Common Interest Community ("CIC") Disclosure if applicable, which puts the buyer on notice that the property is in an HOA and that the buyer will be required to join the HOA as a result of purchasing the property, they will be subject to the covenants, bylaws and rules and regulations of the HOA and that they will be required to pay assessments. (Section 7.4 of the Contract to Buy and Sell). Section 7.4 strongly encourages homebuyers to carefully read the governing documents of the HOA prior to purchase but as many know the CIC documents are just a portion of the documents that a homeowner needs to read prior to purchase. The Contract to Buy and Sell further requires the seller to give to the buyer CIC documents prior to the CIC Document Deadline. CIC documents include all homeowners' association governing documents, including the declaration of covenants, bylaws, rules and regulations, plats and maps; minutes of most recent owners' meetings; minutes of any directors' or managers' meetings during the six-month period immediately preceding the date of the Contract; most recent financial documents including, annual balance sheets, annual income and expenditures statement, and annual budget (if any).

One of the more frequent issues that the HOA Information Office hears relates to the disclosure of HOA fees for both master and sub associations. Many larger subdevelopments have both a master association and a sub-association requiring the homeowner to pay dues for both. Often times Real Estate Brokers are failing to disclose both fees and the new homeowner isn't made aware of the additional monthly requirement until closing which causes confusion.

Whether you are acting as a seller's broker, buyer's broker or transaction broker, it is important to ensure that the potential buyers know and understand a particular HOA and whether that HOA is right for them. Sellers who fail to disclose material facts about the HOA that they know may affect the buyers decision to purchase, may

find themselves in litigation and it may come affect their agent as well. Discuss with the potential purchaser that they may be subject to additional special assessments or increases in regular assessments and find out whether they are able to properly budget for these expenses. A home purchase can be a complicated process and often buyers focus on physical and other features of the property without adequately considering important aspects of dealing with HOAs such as a possible weight restriction on pets in their condominium complex. Find out whether there are potential issues

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Disciplinary Action Taken by the Colorado Real Estate Commission

Alphabetical by last name, real estate brokers only; search the licensee database

Aggus, Kenneth J. -Public Censure And Fine

Aldaz, Leonard W.-Public Censure, Revoked And Stayed Fine

Barron, Thomas J.-Voluntary Surrender And Public Censure

Busch, Jonathan R.-Public Censure, Permanent Surrender And Stayed Fine

Cullington, Barbara-Public Censure, Suspension, Fine and Coursework

Denny, Gary W.-Public Censure, Fine, Coursework, Suspension Stayed If Compliant

Foster, Phillip B.-Public Censure, Fine And Suspension

Holland, Jayson-Public Censure, Fine, Probation Requiring Supervision, and Coursework

Luevano, Louis Ramon-Public Censure, Relinquishment (Treated Same As Revocation), Stayed Fine

Maas, Deanne-Public Censure, Voluntary Relinquishment And Stayed Fine

Meiring, Robert John-Public Censure And Fine

Mendoza, Laura-Public Censure, Suspension, Fine and Coursework

Nelson, F. Irvin-Public Censure, Cease & Desist

O'Neil, Paul-Public Censure, Fine, Probation Concurrent With Sentence

Osborn, Angela Marie-Public Censure, Suspension, Stayed Fine and Coursework

Paplow, Adam-Public Censure and Cease & Desist

Sanders, Susan K.-Final Agency Order For Revocation

Searles,Todd A.-Public Censure And Voluntary Surrender

Shah, Mansoor-Public Censure, Suspension, Restitution, Coursework, Restriction, License Downgrade

Smith, Kurt-Public Censure, Fine and Coursework

Soesbe, Madeline-Public Censure, Suspension, Probation, Coursework and Stayed Fine

Teegardin, Robert B.-Public Censure, Permanent Revocation and Stayed Fine

Teegardin, Stephen M.-Public Censure and Fine

Thomas, C. Gregg-Public Censure, Permanent Relinquishment and Stayed Fine

Toles, Robert-Public Censure, Suspension, Fine and Coursework

Vialpando, Robert J.-Public Censure, Suspension, Fine and Coursework

Werner, Neal A.-Public Censure, Voluntary Relinquishment and Stayed Fine

White, Aaron James-Permanent Surrender, Stayed Fine And Public Censure

Wilson, Brian T.-Final Agency Order For Revocation

Note: Each name and disciplinary action noted does not necessarily mean that this is the only action taken against a license. Search our licensee page for a complete history.

Disciplinary Action Taken by the Board of Real Estate Appraisers

Alphabetical by last name, appraisers only; search the licensee database

Amend, Joan-Licensure Down-grade to Registered Appraiser

Callahan, Michael-Relinquishment

Campbell, Jo-Relinquishment

Colaiano, Raymond-Relinquishment

Connaughton, Kim-Relinquishment

Forsythe, Jerome-Relinquishment

Galvan, Ricardo-Fine and Course Work

Geyer, Stefan-Fine, Course Work, Supervision

Ghiran, Flavius-Relinquishment

Goldstein, Perry-Revocation

Hanayik, Michael-Relinquishment

Ivey, Stephen-Fine, Appraiser Supervision Prohibited, Course Work, Work Product Review

Juschka, Sarah-Fine, Practice Restriction Appraiser Supervision Prohibited

Licata, Joseph-Fine, Course Work,

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Work Product Review

Little, William-Fine, Course Work, Work Product Review

Montoya, Kellie-Relinquishment

Morris, Graziella-Fine, Practice Restriction-Appraiser Supervision Prohibited for Five Years, Course Work, Work Product Review

Peterson, Jeffrey-Fine, Course Work, Supervision

Powell, Thomas-Relinquishment

Radmann, Bruce-Relinquishment

Spahn, Michael-Relinquishment

Whitman, David-Relinquishment

Disciplinary Action Taken by the Board of Mortgage Loan Originators

Alphabetical by last name, mortgage loan originators only;

search the licensee database

Anaya, Gustave-Cease & Desist Order

Baker, Michael-Public Censure, Fine and Suspension

Boston, Tommy-Cease & Desist Order

Burgess, Ron-Cease & Desist Order

Congrove, Andrew-Public Censure, Fine and Suspension

Dear, Gary-Cease & Desist Order, Public Censure and Fine

Dewitt, Steve -Public Censure, Cease & Desist and Stayed Fine

Diaz, Jaime-Permanent Surrender

Dinh, Tony-Cease & Desist Order, Public Censure and Fine

Esmeral,John Frank-Permanent Surrender, Stayed Fine and Public Censure

Gentry, Buzz-Public Censure, Fine, Coursework, Submit all loans for review/approval of supv. MLO, Qtrly Practice Monitor Reports

Gruber, Michelle Minette-Public Censure, Fine, Course-work,Reporting Requirements and Community Service

Hathorne, Elmer-Cease & Desist Order

Kimble, Chris-Cease & Desist Order, Public Censure and Fine

Lawrence, Peter-Cease & Desist Order

Mack, James-Public Censure and Fine

Marx, Corey-Cease & Desist Order

Mathisen, William Francis-Cease & Desist Order

McDowell, Matthew-Public Censure, Fine and Suspension

McQuaig, James-Public Censure and Fine

Melnick, Steven Lewis-Cease & Desist Order

Milian, Patricia-Cease & Desist Order

Oliver, Joe-Cease & Desist Order

Osborne, Tommy-Cease & Desist Order, Public Censure and Fine

Pecoraro, Charles-Public Censure, Fine and Suspension

Rivera, Helen-Public Censure, Cease & Desist and Stayed Fine

Rivera, Jose-Public Censure, Cease & Desist and Stayed Fine

Sessner, Amy-Cease & Desist Order

Sheline, Paul S.-Public Censure, Fine and Suspension

Taylor, Kirk-Public Censure, Fine and Suspension

Tripp, Steve-Cease & Desist Order

Wansten, Michael-Cease & Desist Order

White, Aaron James-Permanent Surrender and Public Censure

Zweben, Jeff-Voluntary Relinquishment, Stayed Fine and Public Censure

Note: Each name and disciplinary action noted does not necessarily mean that this is the only action taken against a license. Search our licensee page for a complete history.

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with the particular buyer that may create a conflict with the covenants. For example if the buyer has a work vehicle find out whether they will be precluded from parking their work vehicle on the street of the HOA. As a broker, pay attention to the reputation of associations and encourage home-owners to talk to boards and other members of the association prior to purchase.

Openly communicating with potential purchasers will allow them to make better decisions on the purchases of their home and prevent headaches and potential law suits. If buyers have an HOA-related question direct them to our website at http://www.dora.state.co.us/real-estate/hoa.htm.

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Additionally, some appraisers have the misconception that USPAP is irrelevant. How many appraisers can recall their supervisors showing them how their practices and reporting techniques complied with USPAP, or corrected them when it was apparent that their work product didn't comply? Some appraisers are shocked to learn of basic USPAP requirements, although these are the Rules and Standards that they are expected to abide by in their professional practice. Of further concern is that some clients and users of appraisals seem to be willing to accept appraisal reports that do not comply with USPAP, and some have standards that seem to be less stringent than USPAP. This has led some appraisers to believe that USPAP is irrelevant, and they have passed this misconception on to their trainees.

One final example is the misconception some appraisers have that their client's guidelines or requirements take precedence over USPAP requirements. As a result, some appraisers have limited their scope of work to such an extent that their assignment results were not credible. Examples include failure to develop the income or cost approaches when they were applicable because their client did not require or request them; ignoring otherwise good comparables because their client required sales within the last 90 days; and failing to collect, verify and analyze market data because their client demanded that the appraisal report be completed within 24 hours of inspection.

Many of the issues were perpetuated by "appraisal mills" that were common in years past, and which focused on minimal training and maximum production. While many of the appraisal mills have disappeared, appraisers may want to exercise caution when selecting their clients. Today, these same issues appear to be perpetuated by some appraisal management companies whose business model may be focused more on profit rather than quality, as expressed by short turnaround times and low fees that do not foster an environment conducive to the development and reporting of credible assignment results that are USPAP compliant.

Based on the foregoing, appraisers are encouraged to re-examine their practices, procedures, methodologies, and techniques related to the development and reporting of their appraisal assignments, to ensure that they are in line with professional, recognized and generally accepted appraisal practice, and are USPAP compliant.

Although this article focuses primarily on issues that appraiser trainees may have resulting from poor supervision and training, experienced appraisers who supervise will also want to take note. If any of the unacceptable practices and deficiencies previously discussed are present in your work, think seriously about the harmful effect this may have on your trainees, the potential harm that could result to your clients and others relying on your and the trainee's work, and the resulting loss of trust in the profession. Might an honest appraisal of your practice also be in order?

Corrective Measures

What if you recognize that you received poor and/or inadequate training in some areas? Perhaps you have gotten into a rut and developed some bad habits, or maybe your self-examination has revealed areas where you can improve as a supervisor. By all means put into place a program to correct these deficiencies! Consider the following suggestions:

Take coursework to get a good understanding of current appraisal principles and procedures. Get in the habit of taking courses on a regular basis, not just to satisfy your CE requirement, but to build on and expand your appraisal profession knowledge. Continuing education is necessary to remain proficient in appraisal practice. Include coursework and self-study materials that will help you understand how the USPAP Rules and Standards are applicable to your practice, and strive to become conversant with these portions of USPAP.

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Follow up your education with mentoring from appraisers who are more experienced than you are so that you can become competent in the practical, daily applications of what you have learned.

Associate yourself with other appraisers who will challenge you to make improvement in your practice; don't limit yourself to those who are comfortable to simply maintain the status quo.

Experienced appraisers can often be found at local appraiser association meetings. Listen to the attendees' comments and you may soon be able to locate those who seem to have a good grasp of appraisal practice; ask attendees who may be a good resource for relevant information on the topic you are concerned with.

Join appraiser forums; some are nationwide and others are local to the area. These are good resources for assistance with difficult assignments and to find out what your peers would do in the same or similar assignment. Test what you read in the forums and other advice you receive against the Rules and Standards of USPAP and recognized appraisal reference works. This will ensure that your work remains compliant with standards of professional practice.

Locate and talk with USPAP instructors and other experienced and well-respected appraisers in your area; ask them to provide mentoring in specific areas, or just to critique several of your reports for USPAP compliance.

You will find that there are many professional appraisers who are willing to share their depth of experience, knowledge and time to aid other appraiser to gain a better understanding and practical working knowledge in areas where they may currently be lacking. Many, especially the more experienced appraisers, desire to give back to the profession, and will provide such mentoring at little or no cost.

Conclusion

Appraisers are encouraged to identify and correct misconceptions, biases, common errors and issues which may be resulting in substandard practice. The cost to improve your practice does not have to be exorbitant, but it does take effort and action. Finally, it is important to make this effort because ultimately you are responsible for your work product, despite influences such as poor training or various types of client pressure. The importance of your role as a professional appraiser requires that you critically reexamine your appraisal practices and procedures, methodologies, techniques, and even possible misconceptions or biases. Thus, the challenge remains, "Will you question the way you were trained?"

Annual Commission Update Course for Brokers Still Offered

The year is winding down and with it so are the months left for real estate brokers to take the 2011 Annual Commission Update Course. The is a mandatory requirement as part of the 24 hours of continuing education needed for licensees to renew their licenses.

Three Annual Commission Update Courses, each counting for four (4) hours of credit, must be taken each license cycle but each course can be taken only once. After a calendar year has passed, licensees cannot go back and take the Commission Update Course if they missed it for that year.

The Division of Real Estate will be performing continuing education audits in the near future, pulling random licensees from the database to verify compliance. For a list of providers offering the Colorado Real Estate Commission Mandatory Update Course, visit the Division's website: www.dora.state.co.us/real-estate.

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- The loan term cannot exceed 30 years
- Total points and fees payable in connection with the loan generally cannot exceed 3 percent of the total loan amount
- Must be underwritten in a manner that includes full amortization and takes account of all mortgage related obligations that are to be paid by the borrower

- If the loan has an adjustable rate, it must be underwritten at the maximum rate achievable during the first five years following closing.
- The lender must consider and verify the borrower's current or reasonably expected income and assets.

Alternative two in the proposed Ability to Repay Rule (the rebuttable presumption) incorporates all of the requirements of the Safe Harbor Alternative and adds to those requirements:

- Consider and verify Employment Status
- Consider and verify Simultaneous Loans (i.e. a second closed simultaneously with the first)
- Consider and verify Current debt obligations
- Consider and verify Debt to Income ratios or alternatively, residual income
- Consider and verify Credit History

Ironically, the second alternative in the proposed Ability to Repay rule (the rebuttable presumption), which is the least desirable of the two alternatives due to the increased likelihood of lawsuits, is more restrictive and imposes more requirements on the lender and mortgage loan originator than does the more desirable Safe Harbor first alternative.

The bottom line here is despite the similarity in the names of the Qualified Residential Mortgage and the Qualified Mortgage, they are two separate concepts springing from two separate sections of the Dodd-Frank Act. While the timetable for final adoption is uncertain, it is clear that both are required by the Dodd-Frank Act and both are going to have significant impact on the industry once adopted. There is some agreement among industry pundits that in the end, the two concepts should be merged into one definition more similar to the proposed QM definition than the QRM definition. Given that there are seven different agencies involved in the two proposed rules (The OCC, The Fed, The FDIC, The SEC, The FHFA, and HUD on the QRM proposed rule and the CFPB on the QM proposed rule) and given our recent experience as an industry with the challenges of RESPA and TIL reform where just two agencies were involved, I won't be holding my breath awaiting that possibility

To learn more about these issues please visit the following websites:

For more information on the CFPB you can access their website at: http://www.consumerfinance.gov/ . Worthy of note is that the CFPB is currently working on combining and simplifying the TIL and GFE disclosures. You can find out what they are doing and participate in the comment process on their website.

For more information on the QRM read The Coalition for Sensible Housing Policy's white paper on the subject at: http://www.sensiblehousingpolicy.org/; or Mark Zandi's (Chief Economist at Moody's Economy.com) paper on "Reworking Risk Retention" at: http://www.economy.com/mark-zandi/documents/Reworking-Risk-Retention-062011.pdf?src=MZ ; or CMLA's comment letter on the QRM at: http://cmla.com/sites/default/files/documents/legislative/CMLA_QRM_Comment_Letter_6_8_2011.pdf

gagebankers.org/files/News/InternalResource/77430_MBAAbilitytoRepayCommentLetter.pdf; For more information on the QM, check out MBA's comment letter on the QM at: http://www.mortgagebankers.org/files/News/InternalResource/77430_MBAAbilitytoRepayCommentLetter.pdf ; or CMLA's comment letter on the QM at: http://cmla.com/sites/default/files/documents/legislative/CMLA_Final_QM_Comment_Letter_7_21_2011.pdf